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10/670,618	09/25/2003	Stephen T. Flock	D6476	6784

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EXAMINER

WITCZAK, CATHERINE

ART UNIT	PAPER NUMBER
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3767

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/13/10 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al (US 2004/0249320) as modified by Parkin et al (US 2002/0133176)

Yamazaki et al disclose a device comprising an actuator (11) for driving an abrasive surface (surface of 10), a container adapted to deliver an abrasive material (20 – used to deliver scrub, see paragraph 0079); and a reservoir/permeable membrane adapted to contain a pharmaceutical (20 – impregnated with a pharmaceutical, see paragraph 0081). Yamazaki et al disclose the claimed invention except for a container connected to the device for collected ablated tissue from the ablation site. Parkin et al teach in paragraph [0003] that it is known to incorporate a vacuum source and collection container for removing ablated tissue. It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to modify the device of Yamazaki et al with a collection container as taught by Parkin et al since such a modification would make the device easier and more hygienic to use.

2. Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al as modified by Parkin et al and further in view of Avrhami et al (US 2003/0212397).

Now even though Yamazaki et al as modified by Parkin et al do not explicitly disclose monitoring feedback using an electrical property attention is directed to Avrhami et al. The Avrhami et al reference teaches in paragraphs [0070], [0121], [0124-5], and [0173] monitoring feedback using a heartbeat to perform a safe ablation procedure. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Avrhami et al in the device of Yamazaki et al as modified by Parkin et al to increase the safety of the ablation procedure for better patient outcome.

Response to Arguments

Applicant's arguments filed 11/16/09 have been fully considered but they are not persuasive. Applicant argues that there is no motivation to combine the teachings of the references. Examiner disagrees. Yamazaki et al teach in paragraph [0020] that the device can be used to remove aged horny cells and dirt and thus it would be obvious to apply the teachings of Parkin et al to provide the device of Yamazaki with a means of collecting this debris for hygienic purposes. Avrhami teaches in paragraphs [0063]-[0072] a device for delivering substance to skin which also ablates the epidermis of the skin and further includes a sensor to monitor a physiological parameter so as to more accurately control the use of the device. Thus, it would have been obvious to apply the teachings of Avrhami et al to provide the device of Yamazaki (which is also drawn to a device for ablating skin and delivering a substance to the skin) with a physiological sensor so as to provide a more accurate way to control the use of the device of Yamazaki et al.

Conclusion

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERINE N. WITCZAK whose telephone number is (571)272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Catherine N Witzak/

Examiner, Art Unit 3767

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767